

1 Q. When you say under cross-examination that you
2 were down for the robberies and not the shootings or the
3 murders, what did you mean by that?

4 A. I was down with robbing people. As for killing
5 them, I wasn't down for that. But I'm still charged
6 with it anyways.

7 Q. And you understand that --

8 A. Yeah.

9 Q. -- the form of the law, complicity, aider and
10 abettor, if two people go out and do one thing, both is
11 responsible for what the other one does?

12 MR. ARNTZ: Objection.

13 THE COURT: Overruled. I will instruct
14 the jury at the appropriate time what all the law is.

15 A. Sure.

16 BY MR. SLAVENS:

17 Q. But that's your understanding?

18 A. Correct.

19 Q. That's what you explained to Mr. Arntz?

20 A. Correct. That's what I -- I, I think the law was
21 passed in '78.

22 Q. Whatever.

23 And your lawyers explained that to you.

24 Q. All right. And to your understanding, that same
25 law would apply to Walter Polson?

A. Correct. It would apply to anybody in our shoes.

Q. All right. Good point.

As you met with the detectives on June 21st, June 22d or June 23rd when you first talked to Detective Lawson, other than what we've heard from you in regards to what you said happened and on cross-examination by Mr. Arntz and the video, have you ever once changed your contention as to what happened?

MR. ARNTZ: Objection.

A. No.

THE COURT: Overruled.

A. Every time Detective Lawson talked to me, my story remained the same.

MR. SLAVENS: That's all I have.

THE COURT: Recross-examination?

MR. ARNTZ: No. Thank you very much.

THE COURT: You may step down.

* * * *

THE COURT: Ladies and gentlemen of the jury, let's take an afternoon recess at this point in time. Remember the usual instructions from the Court not to discuss the case among yourselves or with anybody else. Don't form any opinions, you have not heard all the testimony.

We are going to have to

1 stop right around 4:00. We'll play it by ear if we
2 are coming back in after 4:00, but we do need to take
3 a break at 4:00. Court has other matters. The
4 lawyers have other matters unrelated to this
5 situation. You might want to think about it if you
6 want to call it a day at 4:00 or take another break at
7 4:00 and come back for, say, a half hour or so say
8 from 4:15 or quarter of 5. Think about it. Let
9 Shirley know what your druthers are on the matter.

10 Remember the instructions.
11 We'll see you back in 15 minutes.

12 (WHEREUPON, a recess was taken.)

14 IN OPEN COURT - BEFORE THE JURY

15 3:33 p.m.

16 THE COURT: State may call its next
17 witness, please.

18 MR. DUNDES: State will call Wade Lawson
19 to the stand.

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1 WADE LAWSON, having been first duly
2 sworn according to law, was examined and
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. DUNDES:

6 Q. Would you state your name and spell your last
7 name for the record?

8 A. Yes. Wade Lawson, L-A-W-S-O-N.

9 Q. And where are you employed, sir?

10 A. City of Dayton Police Department.

11 Q. And how long have you been employed there?

12 A. August 19th of this year it will be 24 years.

13 Q. What does your current job duties entail?

14 A. For the past 10 years I have been a homicide
15 investigator.

16 Q. In the homicide squad?

17 A. Yes, that's correct.

18 Q. And could you tell the ladies and gentlemen of
19 the jury who makes up the homicide squad personnel?

20 A. We have four investigators. Myself, my brother
21 Tom Lawson, Detective Doyle Burke, Detective Tony
22 Spells. That's the four investigators. Our sergeant,
23 our immediate supervisor is Larry Grossnickle.

24 Q. I would like to direct your attention back to
25 June 22d, 1992, and ask if you were working a homicide

1 squad on that date?

2 A. Yes. Yes.

3 Q. Approximately 9:03 in the morning did you have
4 the opportunity to be dispatched to Findlay and Monument
5 streets?

6 A. Yes, I did.

7 Q. Why was that?

8 A. A report of a homicide.

9 Q. Is that in Montgomery County, State of Ohio?

10 A. Yes, it is.

11 Q. And when you got there, who else responded to the
12 scene?

13 A. My brother Tom went, Sergeant Grossnickle,
14 Detective Spells, and also Detective Jim Rohrer, who
15 works the assault squad that associated with our squad.
16 He's not a homicide investigator but he responded.

17 Q. Where was your location when you were dispatched?

18 A. I was at our office, the Safety Building, 335
19 West Third Street.

20 Q. Approximately how long did it take you to get to
21 the Findlay and Monument address?

22 A. Arrived at 23 minutes after 9. Twenty minutes.

23 Q. And who was on the scene when you got there?

24 A. Sergeant Wyant was there, the uniformed sergeant;
25 two medic personnels; Martin Dorf, D-O-R-F, I believe it

1 is; uniform officer; Officer Beam was there; coroner's
2 investigator Dave Lett. That's all I recall right
3 offhand.

4 Q. Was there also a victim at the scene?

5 A. Yes.

6 Q. And did you have occasion to look at that
7 particular victim?

8 A. Yes, I did.

9 Q. Could you describe the person to me, please?

10 A. Yes. The victim was a white male, appeared to be
11 young, middle twenties. He was lying on his back,
12 facing, facing east. His hands were -- elbows were bent
13 at 90 degrees up to the sides of his head. Noticed he
14 had a pair of eye glasses in his left hand. His left
15 hand was bloody. The eye glasses were bloody. His
16 right fist was sort of clinched, it was blood on the
17 fist also. Noticed he was dressed in a Emery jacket,
18 black and white. His jacket was a zip up jacket. It
19 was open. It had a white T-shirt on under this jacket,
20 had blood on the T-shirt, blood splattering. And also
21 around the left nipple area, quite a bit of blood there,
22 a, what appeared to be a bullet hole in the shirt. Also
23 had on blue jeans. I noticed some blood along the right
24 front, the right leg, there is blood on the pants. I
25 noticed he was wearing, I think, tan shoes, did not have

1 socks or belt on.

2 MR. DUNDES: May I approach the witness,
3 your Honor.

4 THE COURT: You may.

5 BY MR. DUNDES:

6 Q. Showing you what's been marked previously as
7 State's Exhibit No. 4 for identification. Could you
8 tell me what that is, please?

9 A. Yes, this is a photograph. And it's a photograph
10 of Mark McDonald as I saw him on June the 22d of last
11 year.

12 Q. And are there any visible wounds on that
13 particular person?

14 A. On the chest there is blood spot that I mentioned
15 here, yes. Then, of course, the blood from the mouth
16 running down the front and off to the right side of his
17 face.

18 Q. And those are wounds you just finished
19 describing?

20 A. Yes, that's correct.

21 Q. Also showing you what's been previously marked as
22 State's Exhibit 3 for identification, and could you tell
23 me what that is a photograph of?

24 A. Yes. This photograph shows entire body of Mark
25 McDonald as I saw him on that date.

1 Q. I'm also showing you what's been previously
2 marked as State's Exhibit 9 for identification. Could
3 you tell me what that is, please?

4 A. Yes. This is a photograph of Mark McDonald's
5 left hand where he's clinching the eye glasses.

6 Q. Now those photographs fairly and accurately
7 depict the victim as you saw it on June 22d of 1992?

8 A. Yes, sir, they do.

9 Q. Did you also have the opportunity to speak with a
10 coroner's investigator?

11 A. Yes.

12 Q. And from your conversation with him, what did you
13 learn?

14 A. Well, I was present when he examined the body at
15 that location and was present when keys were taken,
16 removed from Mr. McDonald's pocket on that date.

17 Q. Who removed those keys?

18 A. Mr. Lett.

19 Q. And do you recall what he did with those keys?

20 A. Yes, he kept the keys. But we, there was car
21 parked nearby and he tried the keys -- the keys were
22 taken out of the pocket -- to the door to the car.

23 Q. Now I'm showing you what's been previously marked
24 as State's Exhibit 6 for identification. You testified
25 there was a car parked nearby?

1 A. Yes.

2 Q. Could you identify that photograph for me,
3 please?

4 A. Yes. This is a photograph of a blue '88 Mercury,
5 license C, Charlie, U, Union, V, as in Victor 750. This
6 car is parked 167 northeast where we found the body.
7 And the keys that were removed from Mr. McDonald's
8 pocket did fit the door, to this door.

9 Q. And does that picture fairly and accurately
10 depict the automobile as you saw it on that morning?

11 A. Yes, sir, it does.

12 Q. Now at that point did you occasion to run the car
13 registration?

14 A. Yes.

15 Q. And do you know the owner of the car from that
16 registration?

17 A. Yes, Mark McDonald.

18 Q. Was an address given?

19 A. Yes, on Cheri Lynn Drive.

20 Q. That's in Dayton?

21 A. Yes.

22 Q. After you learned the location of the
23 registration, did you go to that place, the residence?

24 A. Yes.

25 Q. And what did you find when you got there?

1 A. Did not find anyone home at that house.

2 Q. Did you have an opportunity to speak to anyone
3 out at that residence or in that area?

4 A. Yes, spoke to a neighbor house that was nearby.

5 Q. And from that conversation, were you able to
6 learn where the people that lived at the 6106 residence
7 were?

8 A. I learned where the lady of the house worked,
9 yes.

10 Q. And where was that?

11 A. Allied Carpet on Main Street.

12 Q. Is that her place of employment?

13 A. It was, yes.

14 Q. Do you remember her name?

15 A. Yes, Sandra McDonald.

16 Q. And is that the mother of the decedent in this
17 case, Mark McDonald?

18 A. Yes.

19 Q. Okay. From there where did you go?

20 A. Myself -- when I went to the house on Cheri Lynn,
21 I was with the coroner's investigator, Dave Lett. Then
22 myself and Mr. Lett went to Allied Carpet where we
23 contacted Mrs. McDonald.

24 Q. And did you inform her of her son's condition at
25 that time?

1 A. She was informed by the coroner's investigator in
2 my presence, yes.

3 Q. Approximately how long were you with Sandra
4 McDonald?

5 A. Ten minutes at the most I would say.

6 Q. And did you have conversation with her?

7 A. Yes.

8 Q. And what was that?

9 A. In regards to when she last seen her son.

10 Q. Did you speak with her about going out to her
11 residence?

12 A. Yes.

13 Q. And when did you get out there?

14 A. At 4 p.m. that same date.

15 Q. And who was with you when you went out there?

16 A. My brother Tom.

17 Q. Was he also a Dayton homicide detective?

18 A. Yes, he is.

19 Q. Now you testified that you went out there. What
20 did you do when you got there?

21 A. Of course, we met with Mr. McDonald. That's the
22 first time we met him. And we advised the McDonalds
23 that we would like to look through Mark's room, which
24 they allowed us to do.

25 Q. And did you find anything of significance in the

1 investigation?

2 A. No. No.

3 Q. Okay. I would like to direct your attention to
4 approximately 11:16 p.m. on June 22d, 1992, and ask you
5 if you were dispatched to Good Samaritan Hospital?

6 A. Yes.

7 Q. And why is that?

8 A. On -- I was dispatched from my residence to the
9 hospital on a report of a shooting.

10 Q. Approximately what time did you get to the
11 hospital?

12 A. Thirty minutes later, probably.

13 Q. And did you talk to anybody when you got there?

14 A. Yes.

15 Q. And from that conversation what did you learn
16 about the shooting victim?

17 A. Learned that he had died at 11:20 p.m.

18 Q. And did you learn how he had died?

19 A. Yes.

20 Q. How is that?

21 A. He suffered two gunshot wounds, one in the chest,
22 one to the back of the head.

23 Q. And did you know the residence of that victim?

24 A. Yes.

25 Q. How did you know that?

1 A. That I had been provided to me by the dispatcher
2 when I was contacted.

3 Q. Did you know the name of the victim at that time?

4 A. Not until I got to the hospital, no.

5 Q. And what was the name?

6 A. Richard Blazer.

7 Q. Did he live at 1912 Tennyson?

8 A. Yes.

9 Q. At that point, did you have occasion to go to
10 1912 Tennyson?

11 A. Yes, I did.

12 Q. Approximately what time?

13 A. About quarter till midnight, I think is close.
14 I'm not sure the exact time, maybe ten minutes till
15 midnight.

16 Q. Is that fairly close to Good Samaritan Hospital?

17 A. Yes.

18 Q. When you got to the scene of 1912 Tennyson, who
19 was present?

20 A. Sergeant Grossnickle was there, evidence
21 technician Marshall Manning was there, Officer Watson
22 was there, Sergeant Larry Grossnickle and Tom was there.

23 Q. Okay. From there you were sent to East Helena
24 Avenue?

25 A. Yes. I was sent by Sergeant Grossnickle to 42

1 East Helena to meet with an evidence technician, Rick
2 Smith, at that location.

3 Q. Okay. What did you find when you got to East
4 Helena?

5 A. I found that a gun had been recovered. It was
6 there in the possession of Rick Smith. I saw the gun.
7 And after having short conversation with him and
8 Sergeant Larry Faulkner, I left that location and went
9 like one block north to McOwen Street.

10 Q. And what did you do at McOwen Street?

11 A. I saw a car, a red Monza was parked on McOwen at
12 Riverside Drive. The car was headed westbound on McOwen
13 along the north curb of McOwen, actually was in front of
14 69 McOwen. It's a red Monza.

15 Q. I'm showing you what's been marked previously as
16 State's Exhibit 32 for identification, could you tell me
17 what that is a photograph of?

18 A. Yes. This was a photograph of a house along the
19 north curb of McOwen and it shows two cars, a red Monza
20 that I mentioned and a blue car parked in front of this
21 Monza headed both westbound.

22 Q. Is the red Monza the one you identified earlier
23 at the scene?

24 A. Yes, that's correct.

25 Q. Is there an apartment number on that particular

1 house?

2 A. Well, I cannot see an apartment. It looks like a

3 69. I'm not sure.

4 Q. Does that photograph fairly and accurately depict
5 the automobile as you saw it at that time?

6 A. Yes.

7 Q. Did you have occasion to run the license plate
8 registration on that car?

9 A. Yes, I did.

10 Q. And after running it, did you determine who it
11 was registered to?

12 A. Yes, I did.

13 Q. Do you have a name?

14 A. Yes.

15 Q. Who was that?

16 A. The car was registered to Tony, middle, D as in
17 David, Elofskey. License on the car, FMD-921. That car
18 is registered to Tony Elofskey, address 1617 Mack
19 Avenue.

20 Q. Was Mr. Elofskey at the scene at that time?

21 A. No.

22 Q. Do you know where he was?

23 A. No.

24 Q. Did you also have an occasion to look inside of
25 the vehicle?

1 A. Yes.

2 Q. What did you find with regard to the seating
3 arrangements?

4 A. In the car the only thing I noted was some tapes
5 and speakers in the back seat behind the driver seat.
6 I, I did notice that on the passenger side the back of
7 the front seat, it was pushed forward was the main thing
8 that I noticed along with the car.

9 Q. Could you tell from your observations whether or
10 not you had to push that seat forward to get out of the
11 rear seat, the person getting out of the rear seat?

12 A. Yes, the person would, yes.

13 Q. At that point did you return to the Safety
14 Building?

15 A. Yes.

16 Q. Okay. Where again is that located?

17 A. 335 West Third Street.

18 Q. When you get there, what do you do?

19 A. I found that -- well, I already knew that two
20 people had been taken down to our office by the uniform
21 crews to be interviewed. They were in room 275.
22 Officer Wiesman was there, Officers Jackson and Gross,
23 also there was a Walter Polson was in an interview room.
24 And I interviewed Mr. Polson.

25 Q. Okay. Now, you say you interviewed Mr. Polson.

1 Was that an oral interview?

2 A. Yes.

3 Q. Before you had occasion to interview him, did you
4 make general observations of his demeanor?

5 A. Yes.

6 Q. And could you tell the jury what that was?

7 A. He appeared normal. Did not appear to be
8 intoxicated. Didn't smell any odor of alcohol about
9 him. His speech was not slurred. He walked without
10 staggering. Didn't appear to be intoxicated. Appeared
11 to be normal, calm.

12 Q. Did you make at that time any promises to him --

13 A. No.

14 Q. -- to encourage him to talk?

15 A. No.

16 Q. Did you make any threats?

17 A. No.

18 Q. I'm showing you what's been previously marked as
19 State's Exhibit 70 for identification. Can you tell me
20 what that is, please?

21 A. Yes. This is a Pre-Interview Form that was -- it
22 is a Pre-Interview Form.

23 Q. Now, do you normally read this to individuals
24 before you interview them?

25 A. Yes.

1 Q. And do you -- let's look up here at the top where
2 it says your rights. Is that where you specify the
3 charges relating to that particular person?

4 A. Yes, that's correct.

5 Q. Okay. And on the left-hand side at the top,
6 what's up there?

7 A. The name Walter D. Polson, address 121 Valley,
8 Apartment 3, then the social security number and date of
9 birth.

10 Q. Is that the person that you're normally going to
11 interview for these particular charges?

12 A. That's correct.

13 Q. Before interviewing them, do you read each and
14 every one of these paragraphs and have them initial
15 them?

16 A. I read the paragraph. I do not have them initial
17 them. I read the paragraph, ask, do they understand
18 each one before I proceed to the next one.

19 Q. Your practice is not to have them initial it?

20 A. I do not.

21 Q. Do you have knowledge whether or not other
22 officers have them initial the paragraph?

23 A. I've seen some, but I do not.

24 Q. See below is called waiver of rights?

25 A. Yes.

1 Q. Do you read that to the suspect?

2 A. Yes, I do.

3 Q. After reading that, does he fill in approximately
4 how much schooling he's had?

5 A. I fill it in if I'm reading the form to him. I
6 asked the person that I'm interviewing when I get to
7 this point, how many years schooling have you completed,
8 then I insert that myself.

9 Q. In this particular case, did you ask Mr. Polson
10 how many years of school?

11 A. Yes. Now, this was read to him in my presence by
12 Detective Tony Spells. And, yes, I was present when
13 Detective Spells asked about his schooling. And he
14 stated 11 years. He put in -- well, Detective Spells
15 put in 11 up here.

16 Q. It says witnesses down here. Are there two
17 signatures?

18 A. Right.

19 Q. What names are listed as witnesses?

20 A. First one is T.B. Spells and below that is my
21 name, Detective Wade E. Lawson.

22 Q. You were present when Detective Spells signed it?

23 A. Yes, sir, that's correct.

24 Q. Now, there is a signature Walter Polson, is that
25 correct?

1 A. Yes.

2 Q. Were you present when Walter Polson signed it?

3 A. Yes.

4 Q. Now at any time while reading this Pre-Interview
5 Form to Walter Polson, did you have any part of this
6 covered?

7 A. No, absolutely not.

8 Q. He had free opportunity to read each and every
9 paragraph before he signed it?

10 A. Yes. Yes, sir, he did.

11 Q. You testified that Tony Spells was present, is
12 that correct?

13 A. Yes.

14 Q. Did he cover any one of these paragraphs and keep
15 it from Walter Polson's sight before Walter Polson
16 signed it?

17 A. Absolutely not. The form was on the table in
18 front of him. No portion of it was covered.

19 Q. Then after reviewing each paragraph, did Walter
20 Polson agree to talk to you?

21 A. Yes.

22 Q. Without an attorney present?

23 A. Yes, he did.

24 Q. Before beginning your interview with Mr. Polson,
25 did you have any conversation with him specifically with

1 regard to any other suspects in the case?

2 A. Other than that the defendant was there on the
3 second floor also.

4 Q. Now, you say the defendant, which defendant?

5 A. Mr. Howe.

6 Q. Do you know where any other suspects in the case
7 were located at that time?

8 A. No.

9 Q. Did you give Mr. Elofskey any facts that were
10 within your knowledge relating to this case?

11 A. Mr. Polson?

12 Q. I'm sorry. Mr. Polson.

13 A. No facts of the case. I made a comment to him
14 before the interview started. I made the comment that,
15 you know, you were picked up where this man was shot and
16 killed tonight. You were picked up near where the car
17 was. And I said we had a homicide this morning, I know
18 you are involved in that one also. And I said, I want
19 you to tell me the truth about what happened.

20 Q. Did you tell him where the homicide in the
21 morning was located?

22 A. No. I just said we had a homicide this morning.
23 I want you to tell me the truth about what happened.

24 Q. Did you say anything to him about an automobile
25 that you had in your possession?

1 A. Not -- as the conversation continued, yes, we
2 did.

3 Q. And what was that?

4 A. About the car we had on McOwen and it being
5 registered to, to Tony Elofskey.

6 Q. Now, I know at that point you don't know whether
7 or not Tony Elofskey was arrested?

8 A. Oh, Tony Elofskey was not in custody at that
9 time.

10 Q. Now, during your conversations with Mr. Polson,
11 were you ever able to determine his part in the Mark
12 McDonald murder?

13 A. Yes.

14 Q. And from that conversation, were you able to tell
15 what the plan was with regard to Mark McDonald?

16 A. Yes.

17 Q. And what was that?

18 MR. ARNTZ: I will object to this
19 portion.

20 THE COURT: Sustained.

21 MR. ARNTZ: Thank you.

22 BY MR. DUNDES:

23 Q. Were you able to determine from your conversation
24 with Walter Polson if he along with Tony Elofskey and
25 Weston Howe were going to rob Mark McDonald?

1 MR. ARNTZ: Same objection.

2 MR. SLAVENS: Can we approach the bench,
3 your Honor?

4 THE COURT: Yes. Sure.

5 (WHEREUPON, a side-bar conference was held
6 off the record.)

7 THE COURT: Ladies and gentlemen of the
8 jury, we've run into a legal question and it's
9 obviously right at 4 o'clock. And as I indicated to
10 you earlier, the Court has other matters scheduled at
11 4 o'clock, as does counsel. So it appears to be this
12 is a very logical time to take up this legal
13 discussion out of your presence while you're hopefully
14 relaxing somewhere else.

15 In any event, we'll go
16 ahead and recess for the evening at this point in
17 time. We'll reconvene, we'll try to get started at
18 9:15 tomorrow morning. I think it's safe to assume
19 tomorrow, being Tuesday, we will probably get into
20 Wednesday. You should have the case sometime
21 Wednesday. I just wanted to let -- when I say you
22 should have the case, that means you should be
23 deliberating the case sometime Wednesday. Keep in
24 mind, there are several other steps in the process yet
25 to go and I will keep you advised as to each step but

that's the way it looks, at least as we speak.

Have a nice evening.

Remember the usual

instructions of the Court not to discuss the case among yourselves or with anybody else. Don't form any opinions. Keep away from any form of news media relating to the case. And we'll see you tomorrow morning at 9:15:

(WHEREUPON, the proceedings for March 1,
e then concluded.)

* * * *

1 (March 2, 1993 - Morning Session)

2 9:29 a.m.

3 IN OPEN COURT - OUT OF THE PRESENCE OF THE JURY

4
5 THE COURT: All right. Let the record
6 reflect we are out of the presence of the jury.

7 And late yesterday
8 afternoon, which was Monday, March 1, the State
9 attempted to ask the witness, Detective Wade Lawson,
10 some questions relating to what has been labeled as
11 prior consistent statements made by a witness Polson.
12 There was then an off the record discussion and we
13 then took a recess for the day.

14 Is the State prepared to
15 summarize on the record? Let's not worry about the
16 formal wording of the question but the issue in
17 general.

18 MR. SLAVENS: Yes, your Honor.

19 THE COURT: Obviously, if the question
20 is not worded properly, that's a different issue.

21 MR. SLAVENS: I think the Court
22 instructed -- we were not on the record yesterday but
23 at side bar. I informed the Court, at least as to the
24 question subject matter of the detective was
25 admissible, the answer to, it would have been

1 admissible under a couple rules, one of 803, which
2 concerns the evidence rule, state of mind, if you
3 will, of the declarant. And it's one of the
4 questions, re: Did the detective learn from Mr. Polson
5 what Mr. Polson's plan was? And Evidence Rule 803(3)
6 basically states that a declarant's then existing
7 state of mind, emotion, sensation, or physical
8 condition, paren, such as intent, plan, motive,
9 design, et cetera, et cetera, are admissible even
10 though they are hearsay.

THE COURT: Mr. Arntz.

2 MR. ARNTZ: If the Court please, we had
3 an objection, three parts to those later couple
4 questions at the end of the day.

5 The first part of our
6 objection goes to the fact that we feel that this is
7 hearsay. We do not agree that 801(D)(1) permits
8 questions of that type. And we referred the Court to
9 a case, State vs. Smith found at 34 Ohio App. 3d 180,
10 a Richland County case (1986). That case stood for
11 the proposition, the timing of the prior consistent
12 statement may be determinative of the question. When
13 facts giving rise to the motive to falsify existed
14 before the disputed consistent statements. The
15 exemption does not apply.

16 And we feel in this case
17 those statements allegedly made by either Polson or
18 Elofskey to either of the detectives were made at a
19 time when there were certainly a motive to falsify,
20 therefore, that exemption from the hearsay proposition
21 would not be available to the State.

1 803.3 expressly excludes, quote: a statement of
2 memory or belief to prove the fact remembered or
3 believed. And that is the purpose for which the State
4 is offering these statements is to argue that because
5 of statements was made by either Polson or Elofskey,
6 that therefore indicates that the statement substance
7 is true at that time. 803(3) expressly excludes the
8 use of a statement for that kind of a purpose.

13 For instance, I believe one
14 of the questions yesterday asked Detective Lawson, as
15 a result of his conversation with Mr. Polson he had,
16 quote, determined, unquote, that something had
17 happened. And the only way Lawson could have
18 determined that by implication was because he relied
19 on the truthfulness of what Polson told him. So,
20 again, the form of the question is important because
21 it suggests the very truthfulness of the answer which
22 constitutes hearsay.

1 Mr. Arntz, if the record does not reflect, assuming
2 that a question such as that was asked, that that is
3 the wording of the question, the Court would sustain
4 that type of an objection based upon the reason stated
5 by defense counsel. However, assuming the question is
6 properly worded, the Court believes that Rule
7 801(D)(1), clearly applies in this situation,
8 particularly in view of the cross-examination of the
9 witness Polson and Elofskey and addressing simply, I
10 think a review of that cross-examination would
11 indicate, although the possibility does exist as to
12 the reasons and motivation to lie at a particular
13 moment in time, may have existed earlier. It was
14 certainly brought up to date with the, the issue of
15 the plea negotiations and the plea bargaining and the
16 potential each of the defendants could each receive.

17 In addition, the case
18 relied upon by the defendant, State vs. Smith, a
19 review of that case shows that it's clearly not
20 applicable in this present situation. And without
21 getting into the merits of that case, I find that has
22 totally no value whatsoever as the citation on this
23 issue in this case. Perhaps in a factually similar
24 case to the Smith matter, it would be considered but
25 at least not under the state of the evidence in this

1 particular case.

2 MR. ARNTZ: If the Court please, may we
3 have a continuing objection then to the State
4 eliciting the statements, the prior statements of
5 either Polson or Elofskey in this matter?

6 THE COURT: I have no objection to
7 that.

8 Mr. Slavens, do you have an
9 objection?

10 MR. SLAVENS: No objection.

11 MR. DUNDES: No objection.

12 THE COURT: That way we can run smooth.
13 The record will reflect this area of testimony has
14 been objected to by the defendant. And assuming now
15 the continuing objection goes to the general subject
16 matter, not necessarily to the individual question or
17 the form of the question or any other objection that
18 the defense may have.

19 MR. ARNTZ: I understand.

20 MR. SLAVENS: We don't disagree. We
21 concur.

22 THE COURT: Now with that then, is the
23 State ready to proceed?

24 MR. DUNDES: Yes, your Honor.

25 THE COURT: Defense ready?

1 MR. ARNTZ: Yes, your Honor.

2 THE COURT: Anything else for the
3 record while we are waiting on the jury?

4 MR. ARNTZ: None that I know of.

5

6 IN OPEN COURT - BEFORE THE JURY

7 9:40 a.m.

8 THE COURT: Good morning.

9 THE JURY: Good morning.

16 Detective Lawson, you're
17 still under oath.

18 DETECTIVE LAWSON: Yes.

19 THE COURT: And, Mr. Dundes, you may
20 continue.

21 MR. DUNDES: Thank you, your Honor.

22

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1 (Direct Examination - Continued)

WADE LAWSON

3 BY MR. DUNDES:

4 Q. The best way to start, Detective Lawson, I would
5 like to direct your attention to an oral interview that
6 you had with Walter Polson on June 22d of 1992 at
7 approximately 1:20 in the morning. And I would like to
8 ask you what you said to him at that time.

9 A. Yes. First thing I recall saying to Mr. Polson,
10 I know you were involved in this homicide earlier this
11 evening, arrested short time after you run from the car.
12 I know you were involved in the homicide over at, over,
13 that happened earlier over at Monument and Findlay. I
14 want you to tell me about both of them.

15 Q. At that point was he willing to talk to you?

16 A. Yes, he was.

17 Q. What did he tell you with regard to the Mark
18 McDonald homicide?

19 A. Stated earlier, was actually Sunday, late Sunday
20 night or Sunday evening, he and his brother, half
21 brother, the defendant Mr. Howe, had walked over from
22 the vicinity of Valley and Troy Street, where they were
23 staying over on East Fifth Street over at that location.
24 They met up with Tony Elofskey and had rode around in
25 Tony's car. They wanted to rob somebody. And they

1 drove over to the river levee off Helena Street. And
2 that Tony Elofskey was driving the car, this red Monza,
3 Tony's car. And that Mr. Polson said that he was in the
4 back of the car. He was ducked down in the back so
5 nobody could see him. And his brother, the defendant,
6 was in the front seat. He was ducked down in the front
7 so if they met somebody on the river levee, the only
8 person would be seen would be the driver, the person
9 that they would only see.

10 Q. Did they tell you why they were ducked down?

11 A. Yes.

12 Q. What was that?

13 A. That nobody would approach them on the river
14 levee if three people were in the car. So they had to
15 make it appear that only one person was in the car.

16 Went on to say that as they were on the river
17 levee, a person in the car did pull up and did talk with
18 Tony Elofskey. Polson, of course, said he stayed down
19 in the back of the car and his brother in the front.
20 Then, they drove away. Then this car was following
21 them. He was aware that the car was following them.

22 And then they got to a field. He called it
23 Monument and Findlay Street. They arrived first and
24 parked. And he said he stayed down in the back of the
25 car. And his words to me was that his brother was

1 acting as if he was giving a blow job to Tony Elofskey.

2 And he stated the person walked up to the car of
3 a white male with glasses on. When he did, the
4 defendant, his brother, shot the man three times.

5 Q. Now, did Mr. Polson tell you whether or not he
6 had a gun himself?

7 A. He said he had a gun, yes.

8 Q. And what type of gun?

9 A. 25 caliber semiautomatic.

10 Q. Did he describe it to you?

11 A. Yes.

12 Q. And what was the description of that gun?

13 A. It was a chrome plated cream or nickel plated gun
14 with white handle.

15 Q. Was it also a Raven?

16 A. It was a Raven, yes.

17 Q. Did he tell you what type of gun that Mr. Howe
18 had?

19 A. Yes.

20 Q. What type of gun was that?

21 A. It was also a 25 caliber handgun. It was black
22 or blue steel.

23 Q. Was it a Bryco?

24 A. Right.

25 Q. What, if anything, did he tell you that Mr. Howe

1 did at that time?

2 A. Well, after, after firing three shots to the man
3 that was standing at beside the driver's door of the
4 car, when he was shot, he stated his brother shot the
5 man three times actually past Elofskey's face. He would
6 have been holding the gun past Elofskey and shot the
7 man. Then he said both he and Polson and -- he and Howe
8 jumped out of the car. The man took off running after
9 he was shot. That they chased him and the man fell and
10 that they went through his pockets, took his, actually
11 said his brother took the billfold out. He and Polson,
12 stated that he ended up with the wallet. They brought
13 it back to the car and left the man at that location,
14 that Tony Elofskey pulled out and picked them up, they
15 jumped back in the car and left that location.

16 Q. Okay. Did he tell you where they went from
17 there?

18 A. Yes. They first went down on Wayne Avenue to a
19 Green Machine and tried to use one of the cards that
20 they obtained from the victim's billfold, Mark
21 McDonald's billfold. Then I believe went to Woodman
22 Drive. They tried to use, to use this Green Machine
23 card or this money card unsuccessfully.

24 Q. I'm sorry?

25 A. Unsuccessfully. They didn't get any money.

1 Q. Did he tell you what they did with the wallet or
2 billfold after that?

3 A. Yes, he did.

4 Q. What did he say? What was that?

5 A. They drove back down to the Oregon District. He
6 was not sure of the exact location that his brother, Mr.
7 Howe, threw the billfold and contents down the sewer.

8 Q. And did you have opportunity to go out and look
9 for the billfold?

10 A. Yes, I did.

11 Q. And approximately when was that?

12 A. Left our office probably about 10 after 2 a.m. I
13 think we found the billfold at 2:40 a.m.

14 Q. Was it in the Oregon District?

15 A. Yes, at northwest corner of Brown and Green
16 Street.

17 Q. At that time did you retrieve the wallet?

18 A. I called for -- I can see -- we checked several
19 sewers. He wasn't sure the exact location within a few
20 block area. And myself and Sergeant Larry Grossnickle
21 along with Mr. Polson in the car, we checked probably
22 six or seven or eight sewers. And then at this
23 particular one, I, with my flashlight in the sewer, I
24 could see a billfold and identification scattered out in
25 the sewer. And we called for an evidence technician.

1 Officer Rick Smith met us at 2:50 a.m. And he pulled
2 the cap off the sewer and recovered this property and,
3 of course, I could see the identification and so forth
4 at that time.

5 Q. Now you said that you could see the
6 identification. Could you tell the name on the
7 identification?

8 A. Yes.

9 Q. What was that name?

10 A. Mark McDonald.

11 Q. Then Rick Smith at that time collected the
12 evidence?

13 A. Yes, he did.

14 Q. And where did you go from there?

15 A. Headed back to our office.

16 On the way, we had, we asked Mr. Polson if he
17 would just show us where the homicide happened earlier
18 that morning or the morning before. And he directed us
19 to Monument and Findlay Street. And after going by that
20 location, returned to the Safety Building.

21 Q. Now, did you also have the opportunity to talk to
22 Mr. Polson with regard to the murder of Richard Blazer?

23 A. Yes.

24 Q. And what did you tell him with regard to that
25 particular murder?

1 A. I didn't tell him anything. I just told, we knew
2 he was involved in it and wanted him to tell the truth
3 about it.

4 Q. Did he tell you the truth about it?

5 A. Yes.

6 Q. And what did he say to you?

7 A. Stated that --

8 MR. ARNTZ: Excuse me. We will object.

9 THE COURT: I will sustain the
10 objection.

11 MR. ARNTZ: Thank you.

12 BY MR. DUNDES:

13 Q. Did Walter Polson tell you who was with him at
14 1912 Tennyson?

15 A. Yes.

16 Q. And who was that?

17 A. Tony Elofskey and Weston Howe.

18 Q. I'm sorry. I couldn't hear you.

19 A. Tony Elofskey and Weston Howe were with him.

20 Q. And what did he say about when they first met up
21 that evening?

22 A. He said they had first met the person who
23 referred to as Dick about 6 o'clock that Monday evening,
24 June 22d on the river levee. And that he and -- Polson,
25 Elofskey had been together. Howe was not with them at

1 that time. But they, the two of them were riding around
2 on the levee and they met the person that Tony Elofskey
3 new as Dick. He knew Dick's name. Polson said he,
4 being Polson, did not know the man but Elofskey did.
5 And they had some -- he had some conversation with him,
6 went their separate ways. He and Elofskey stayed
7 together.

8 Later that evening they met up with Mr. Howe over
9 by Valley and Troy Street and the three of them decided
10 they would go rob Mr. Blazer. And that a phone call was
11 made by Elofskey to Mr. Blazer. Polson further stated
12 that Elofskey had introduced him, being Polson, as Tom.
13 And the call was made from a pay phone, an outside pay
14 phone. And that he asked Mr. Blazer if, if the two of
15 them could come over to his house. And he agreed that
16 they could. So they all three, being Polson, Elofskey,
17 and Howe drove over there and in Elofskey's Monza. And
18 that their plan was to rob Mr. Blazer. Go inside, the
19 two would go inside. Polson said, I had my gun. My gun
20 was tucked down the front of my pants. That me and
21 Elofskey was going inside. Once inside, I was going to
22 pull the gun, leave my brother in the car. Said we were
23 going to take him to a Green Machine, make him take
24 money out of his account. He said his brother, being
25 Mr. Howe, had also stated that he wanted to take his TV

1 and stereo.

2 Stated once they got there, that Mr. Blazer did
3 come to the door and let them in. Walked in the living
4 room. Stated when he did, he pulled out this 25
5 automatic. Stated he had a gun. He knew that his
6 brother, Mr. Howe, had a gun out in the car. Elofskey
7 did not have a gun, according to Polson. And that when
8 he pulled the gun out, he fired one shot and that
9 Mr. Blazer -- Elofskey ran out the door first followed
10 by Mr. Blazer. Polson said he was the last one to go
11 out the door. Stated that when Mr. Blazer ran out the
12 front door of his house, that his brother, Mr. Howe,
13 shot him, several shots, shot Mr. Blazer several times
14 just as he ran out the door.

15 Stated they got into the car and drove away. And
16 that a car began following them. Followed them several
17 blocks until they got on Riverside and McOwen where they
18 jump out of the car.

19 Q. Now, you told us earlier that Walter Polson told
20 you that only two of them were going to go out to
21 Richard Blazer's, at least that's what they told Richard
22 Blazer?

23 A. Right.

24 Q. Did they -- did he tell you why he said that to
25 Richard Blazer?